



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 2, 1962

Honorable W. G. Walley, Jr.
Acting Criminal District Attorney
Jefferson County Courthouse
Beaumont, Texas

Opinion No. WW-1325

Re: Proper disposition of
irregular ballots cast
in counties using voting
machines, under Sections
16, 18 and 20, Art. 7.14,
Texas Election Code.

Dear Mr. Walley:

You have asked the following question:

"We desire an opinion from your office
on the proper disposition of irregular
or paper roll ballots located on voting
machines. In our minds, there appears to
be a conflict in the statutes.

". . .

"Section 18 of Art. 7.14, Election Code⁷
requires that the irregular ballots be filed
with the canvass while Section 20 states that
they shall be preserved in the same manner
and for the same length of time as other
ballots. . . ."

Art. 7.14, Texas Election Code, provides in part as
follows:

"Sec. 16. Ballots voted for any person
whose name does not appear on the ballot shall
be designated 'irregular' ballots, but such
ballots shall be valid and shall be counted
as though they had been voted on the voting
machines. Should a voter desire to vote for
some person for an office whose name does
not appear on the ballot, such person shall
write the name of the person for whom he desires
to vote on the roll of paper provided and
designated for such purposes and such ballot
shall be counted and included in the canvass
officially made from that precinct, but no
irregular ballot shall be cast or counted for
any person whose name shall appear on the voting
machine.

" . . .

"Sec. 18. . . Irregular ballots, properly sealed and signed, shall be filed with the original statement of canvass, which canvass shall be delivered in the same manner and to the same authorities as now provided by law.

. . .

" . . .

"Sec. 20. . . Irregular ballots shall be preserved in the same manner and for the same length of time now provided by law for other ballots."

We interpret this last sentence under Sec. 20, Art. 7.14, Election Code, which refers to "other ballots," to mean the same as other paper ballots.

With reference to the disposition of paper ballots, cast in a general or special election, Art. 8.32, Election Code states:

"Immediately after counting votes by the managers of the election, the presiding officer shall place all the ballots voted, . . ., into a wooden or metallic box, and shall securely fasten the box with nails, screws, or locks, . . ., and he shall immediately, . . ., deliver said box to the county clerk of his county whose duty it shall be to keep the same securely. . . ."

Art. 13.23, Election Code, has a similar provision with respect to delivering the ballots and ballot boxes to the County Clerk, in the case of primary elections.

With reference to the length of time the clerk shall keep the ballots, if they were cast in a general or special election, Art. 8.32, Election Code provides:

" . . . If no contest arose out of the election within six (6) months after the day of such election, said clerk shall destroy the contents of said ballot box by burning the same."

Concerning the length of time the clerk shall keep the ballots, if they were cast in a primary election, Art. 13.28, Election Code, provides:

"Ballot boxes, after being used in the primary elections, shall be returned to the County Clerks as provided in Section 201 [Art. 13.23, Election Code] of this Act, and unless there be a contest for a nomination in which fraud or illegality is charged, they shall be unlocked and unsealed by the County Clerk and their contents destroyed by the County Clerk and the County Judge without examination of any ballot at the expiration of sixty (60) days after such primary election. Provided that the District Judge, upon his own motion, or upon the request of the County or District Attorney, may, by an order entered on the minutes of the District Court, defer the destruction of the contents of such ballot boxes for a period not to exceed twelve (12) months after such primary election."

Section 18, Art. 7.14, Election Code, states that the irregular ballots shall be filed with the original statement of canvass. The "statement of canvass" used in connection with voting machine results is the same instrument or document called a "return" in connection with the results of an election where paper ballots are used. Art. 8.29, Election Code, provides in part as follows:

"When the ballots have all been counted the managers of the election in person shall make out triplicate returns of the same certified to be correct, and signed by them officially, showing: First, the total number of votes polled at such box; second, the number polled for each candidate; one of which returns, . . . shall be . . . delivered . . . to the county judge of the county; another of said returns, . . ., shall be delivered. . . to the county clerk of the county. . .; and the other of said returns, shall be kept by the presiding officer of the election for twelve (12) months from the day of the election. . . ."

Art. 13.24, Election Code, has a similar provision with respect to the filing of the returns in the case of primary elections, except that the three copies of the returns are distributed as follows: one copy to the County Chairman, one copy to the County Clerk, and one copy sealed up in the ballot box with the ballots. While the disposition of two of the copies

of the returns varies, depending on the type of the election (for instance, the county judge gets a copy in the case of a general or special election, while it is the county chairman who receives the copy in the case of a primary election), yet the County Clerk always gets a copy in every case. Neither Art. 8.29 nor Art. 13.24 attempts to designate the various copies of the returns as "original", "duplicate," or "triplicate," except to say that the return shall be prepared in triplicate, which means three copies. Sec. 18, Art. 7.14 provides that the irregular ballots shall be filed with the "original" statement of canvass. Which one of the copies of the returns or statement of canvass is the original? The statute does not say, but in the case of paper ballots, Arts. 8.32 and 13.28, Election Code, provide that such paper ballots are delivered to and kept by the County Clerk. The County Clerk is the proper custodian of paper ballots, and these irregular ballots cast in connection with voting machine elections should be treated as "other ballots." Therefore, we hold that the irregular ballots cast in a voting precinct which uses voting machines, "properly sealed and signed", should be delivered to the County Clerk together with the copy of the statement of the canvass for such precinct which is filed with the Clerk. The Clerk shall keep the ballots for the length of time provided in Art. 8.32, Election Code, in the case of general or special elections, and as provided in Art. 13.28, in the case of primary elections.

S U M M A R Y

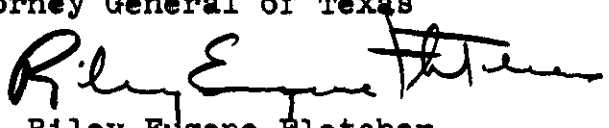
Irregular ballots, as defined in Sec. 16, Art. 7.14, Election Code, shall be delivered with a copy of the statement of canvass to the County Clerk, as provided in Sec. 18, Art. 7.14, Election Code.

Such irregular ballots shall be preserved by the County Clerk for the length of time provided in Art. 8.32, Election Code, in the case of general or special elections, and for the length of time provided in Art. 13.28, Election Code, in the case of primary elections.

Yours very truly,

WILL WILSON
Attorney General of Texas

By:


Riley Eugene Fletcher
Assistant

REF/cm

APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL

By: Houghton Brownlee, Jr.